located in a purely residential section of the community. *Saier* v. *Joy*, 198 Mich. 295, 164 N. W. 507; *Densmore* v. *Evergreen Camp*, *supra*. But in any case it is a question of applying the legal standard to the particular facts of a given situation — to attempt to lay down detailed rules as to what constitutes a nuisance is futile.

OFFER AND ACCEPTANCE — BILATERAL CONTRACTS — SILENCE AS ACCEPTANCE. — A traveling salesman of the defendant corporation solicited and obtained from the plaintiff an order for certain goods which he was authorized to handle. The plaintiff heard nothing more from the order until he directed shipment two months later under the terms of the order. The defendant denied any acceptance. In the meanwhile the price of the goods had advanced considerably. The plaintiff sued for breach of contract and obtained judgment in the lower court. *Held*, that the judgment be affirmed. *Cole-McIntyre-Norfleet Co.* v. *Holloway*, 214 S. W. 817 (Tenn.).

For a discussion of this case, see NOTES, *supra*, p. 595.

PLEADING — PARTIES — JOINDER — COUNTERCLAIM AGAINST THE PLAINTIFF AND ANOTHER IN THE ALTERNATIVE UNDER THE JUDICATURE ACT. — In an action for goods sold and delivered, the defendant pleaded as a defense and also by way of counterclaim that the plaintiff committed a breach of an implied term of the contract by failing to pack the goods in such a way as to make them reasonably fit to stand the ordinary risks of transit by rail. In the counterclaim he joined the carrier, alleging against it that the goods had been so treated in transit that on their arrival they were in bad condition. The Judicature Act of 1873 provides that the courts shall have power to grant to any defendant "all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not . . . as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose" (36 & 37 VICT., c. 66, § 24 (3)). From an order refusing to strike out the counterclaim in so far as it joined the carrier as a defendant to the counterclaim, the plaintiff appealed. *Held*, that the order be affirmed. *Smith* v. *Buskell*, [1919] 2 K. B. 362.

Under the Judicature Act of 1873 and the Supreme Court of Judicature Rules, Order XVI, Rule 7, a plaintiff who is in doubt as to the person from whom he is entitled to redress may join two or more defendants in order to determine which, if any, of the defendants is liable. See 31 HARV. L. REV. 1034. The principal case is the converse of this proposition. A defendant who wishes to set up a counterclaim to a cause of action growing out of the same transaction as that which formed the basis of the plaintiff's cause of action, but who is in doubt as to whether the plaintiff or some third party connected with the transaction is liable, may join both as defendants to the counterclaim. See SUPREME COURT OF JUDICATURE RULES, Order XIX, Rule 3; Order XXI, Rules 11 and 15. The result is a logical development from the previous English decisions, and the case shows a willingness by the English Court effectively to carry out the purpose of procedural reform legislation; an attitude which has unfortunately not always been taken by the American courts.

PUBLIC SERVICE COMPANIES — FRANCHISES — PROTECTION OF PUBLIC SERVICE ENTERPRISES FROM COMPETITION. — A metropolitan street railway system had been established, under a general law providing that no two railroad corporations should occupy and use the same street or track for a greater distance than five blocks, and the franchise contained a similar provision. It sought an injunction to prevent the city from constructing a parallel system in

the same streets and on either side of its tracks as authorized by a subsequent statute and an amendment to the state constitution. *Held*, that the injunction be denied. *United Railroads of San Francisco* v. *City and County of San Francisco*, 249 U. S. 517.

For a discussion of the principles involved in this case see NOTES, p. 576, *supra*.

RESCISSION — FOR BREACH OF WARRANTY — DEDUCTION FOR BENEFITS RECEIVED. The plaintiff sold a twenty-five horse-power threshing engine to the defendant. In answer to the defendant's constant complaints that the engine was unsatisfactory, the plaintiff promised to make it work properly. After the defendant had used it for two years, the plaintiff sued for the balance of the purchase price. The defendant then discovered that the engine had a capacity of only twenty-two horse-power and claimed the right to reject the engine and recover the purchase installments already paid. The lower court found that the representation that the engine had a capacity of twenty-five horse-power was a condition of the sale and that its failure to develop twenty-five horse-power was the main cause of the engine's unsatisfactory performance. *Held*, that the defendant should recover the purchase installments less $204. *Cushman Motor Works, Ltd.* v. *Laing*, 49 D. L. R. 1 (Alberta).

For a discussion of this case, see NOTES, p. 602, *supra*.

STATUTES — INTERPRETATION — EFFECT OF PRIOR REPEALED STATUTES COVERING THE SAME SUBJECT. — The defendant was indicted under a statute making it unlawful to deal in liquors, which were defined as "all combinations . . . of drinks and drinkable liquids which are intoxicating; and any liquor which contains more than 2½% of proof spirits shall be conclusively deemed to be intoxicating." (1916 6 GEO. V, c. 112, § 20). On proof that the defendant had in his possession a patent medicine which contained more than 2½% of alcohol but which also contained drugs the effect of which would be to cause sickness before intoxication, he was convicted. *Held*, that the conviction be quashed. *Rex* v. *Dojacek*, 49 D. L. R. 36 (Manitoba).

In determining the uncertain meaning of the word "drinkable," the court looked at the words and policy of a prior repealed statute which provided for local option. See 1913 REV. STAT. MANITOBA, c. 117. Statutes *in pari materia*, though passed at different times and not referring to one another, are generally considered as one system of legislation and are construed as explanatory one of another. See *Rex* v. *Loxdale*, 1 Burr. 445, 447; *Goldsmiths Co.* v. *Wyatt*, 76 L. J. K. B. (N. S.) 166, 169. See also ENDLICH, INTERPRETATION OF STATUTES, § 43. This is done upon the assumption that the legislature is familiar with the earlier statutes and by use of similar words has intended to preserve similar meanings. See *Town of Benton* v. *Willis*, 76 Ark. 443, 446, 88 S. W. 1000, 1001; *Robbins* v. *Omnibus R. Co.* 32 Cal. 472, 474. Earlier acts may explain the meaning of later acts. *Patterson* v. *Winn*, 11 Wheat. 380; *Powers* v. *Shepard*, 48 N. Y. 540. And *vice versa*, later acts may explain earlier ones. *Clark* v. *Powell*, 4 B. & Ad. 846; *United States* v. *Freeman*, 3 How. 556. Even repealed or expired statutes should be taken into consideration as instructive steps in the development of the existing system of legislation upon a subject. *Ex parte Crow Dog*, 109 U. S. 556; *Wellsburg, etc. R. Co.* v. *Panhandle Traction Co.*, 56 W. Va. 18, 48 S. E. 746. The instant case is an illustration of a situation where the application of this principle is helpful.

STATUTES — INTERPRETATION — INSURANCE POLICY AS "MOVABLE EFFECTS" WITHIN STATUTORY DOWER. — A married man procured policies of insurance upon his life, payable to his executors, administrators, or assigns. By the provisions of the policy he reserved the power of changing the bene-